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ANDREW S. HOFFMANN*

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*Admitted in New York and Ohio

March 24, 2014

Richard Garabini, Esq.
Garabini & Fitzgerald, P.C.
420 Lexington Ave, Suite 2743
New York, NY 10170

Re: Jonathan Agramonte v. ST
Management Group, Inc., et al.
Index No.: 14 Civ. 1790

Dear Mr. Garabini,

I am counsel to ST Management Group and Steve Tenedios. I write concerning the lawsuit you recently filed on behalf of Jonathan Agramonte against my clients in the United States District Court for the Southern District of New York.

The complaint you prepared, signed and caused to be filed with the Court is replete with demonstrably false factual allegations and is thus completely and utterly frivolous. The purpose of this letter is to advise you of the actual facts concerning Mr. Agramonte's very brief employment with my clients and to provide you with an opportunity to withdraw your pleading before my clients are required to expend any time or resources defending this travesty.

Your complaint alleges that Mr. Agramonte worked for defendants at its location at 370 Lexington Avenue in Manhattan from March 2013 until May 2013. See complaint at ¶¶ 1, 2 The complaint also alleges that he worked as a dishwasher, and was paid at the rate of \$5.00 per hour. Id at ¶¶ 1, 2 The complaint further alleges that he worked "off-the-clock" for 55 hours per week and that his shift regularly extended beyond 10 hours. Id at ¶¶ 2, 38 Finally, your complaint alleges that my clients failed to provide Mr. Agramonte with a weekly wage statement setting forth his hours and rate of pay and additionally failed to provide him with a wage notice as required by the New York Wage Theft Prevention Action. Id at ¶¶ 78, 79

Remarkably, *every single one* of these allegations which form the factual predicate for your lawsuit is absolutely, unequivocally and demonstrably false. I shall explain.

Mr. Agramonte was hired by my clients on May 21, 2013. I enclose for your review a copy of the W-4 form he filled out and signed immediately before he started work that very same day. Contrary to your false allegation, Mr. Agramonte was also provided with a completed EWTPA form before he started work on May 21, 2013 and signed the copy retained by my client, a copy of which is also attached for your review.

You will note that the EWTPA form that Mr. Agramonte signed on May 21, 2013 indicates that his hourly rate of pay was to be \$5.65 per hour (the lawful minimum tipped rate in effect at that time) and not the \$5.00 per hour alleged in your complaint.

Contrary to your allegations, all of Mr. Agramonte's work for my clients took place at its location at 14 East 42nd Street. He was not a dishwasher, as you alleged, but a delivery person who received (and so acknowledged in writing) substantial tips each shift he worked.

Also contrary to your allegation that Mr. Agramonte worked for my client for two months, the truth is that he worked for a grand total of eight (8) days. He received two weekly pay checks and printed wage statements reflecting this eight days of employment. They are attached for your review. You can see that Mr. Agramonte's actual, contemporaneously recorded work hours were used to calculate his pay, and that he signed his name to reports showing his daily start time, time in and out of break and stop time for each of the two weeks he worked.

You can also see from his printed wage statement each week that he was paid "on the books" and at the appropriate \$5.65 per hour rate for every minute he worked.

Contrary to your false allegations as set forth in the complaint, Mr. Agramonte did not work 55 hours per week or anywhere close to it. Rather, his hour totaled 26.83 and 29.08 during the two weeks he worked, as he acknowledged in writing.

Finally, Mr. Agramonte *never* worked at my client's location at 370 Lexington Avenue or at 1211 6th Avenue. We have actually gone to the trouble to show his photo to employees at each location to see if any of them remember him in any way. Not one person did.

Mr. Agramonte was advised on May 30, 2013 that his training had completed and that he was being transferred to work the following week at 1211 6th Avenue. It is very common in my clients' business for employees to be transferred to a location with an available position upon the completion of training.

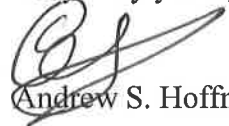
Apparently, Mr. Agramonte did not want to work at 1211 6th Avenue and resigned on May 30, 2013.

I have taken the trouble to write this letter to you, and to send you the attached documents at this beginning stage of the case because I expect you, as a responsible and ethical practitioner, to review the matter with Mr. Agramonte and thereafter take immediate action to withdraw the case you filed.

Please be advised that in the event you do not withdraw the complaint and choose to continue to prosecute what you know is an entirely contrived and frivolous action, my clients shall seek to impose sanctions on you and your firm pursuant to Rule 11 of the Federal Rules.

Please be guided accordingly.

Very truly yours,



Andrew S. Hoffmann

Form W-4 (2013)

Purpose. Complete Form W-4 so that your employer can withhold the correct federal income tax from your pay. Consider completing a new Form W-4 each year and when your personal or financial situation changes.

Exemption from withholding. If you are exempt, complete **only** lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2013 expires February 17, 2014. See Pub. 505, Tax Withholding and Estimated Tax.

Note. If another person can claim you as a dependent on his or her tax return, you cannot claim exemption from withholding if your income exceeds \$1,000 and includes more than \$350 of unearned income (for example, interest and dividends).

Basic instructions. If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 further adjust your withholding allowances based on itemized deductions, certain credits, adjustments to income, or two-earners/multiple jobs situations.

Complete all worksheets that apply. However, you may claim fewer (or zero) allowances. For regular wages, withholding must be based on allowances you claimed and may not be a flat amount or percentage of wages.

Head of household. Generally, you can claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for information.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the **Personal Allowances Worksheet** below. See Pub. 505 for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax. If you have pension or annuity

income, see Pub. 505 to find out if you should adjust your withholding on Form W-4 or W-4P.

Two earners or multiple jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others. See Pub. 505 for details.

Nonresident alien. If you are a nonresident alien, see Notice 1392, Supplemental Form W-4 Instructions for Nonresident Aliens, before completing this form.

Check your withholding. After your Form W-4 takes effect, use Pub. 505 to see how the amount you are having withheld compares to your projected total tax for 2013. See Pub. 505, especially if your earnings exceed \$130,000 (Single) or \$180,000 (Married).

Future developments. Information about any future developments affecting Form W-4 (such as legislation enacted after we release it) will be posted at www.irs.gov/w4.

Personal Allowances Worksheet (Keep for your records.)

A	Enter "1" for yourself if no one else can claim you as a dependent	A	<u>1</u>
B	Enter "1" if: { • You are single and have only one job; or • You are married, have only one job, and your spouse does not work; or • Your wages from a second job or your spouse's wages (or the total of both) are \$1,500 or less. }	B	<u> </u>
C	Enter "1" for your spouse . But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.)	C	<u> </u>
D	Enter number of dependents (other than your spouse or yourself) you will claim on your tax return	D	<u> </u>
E	Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above)	E	<u> </u>
F	Enter "1" if you have at least \$1,900 of child or dependent care expenses for which you plan to claim a credit (Note. Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)	F	<u> </u>
G	Child Tax Credit (including additional child tax credit). See Pub. 972, Child Tax Credit, for more information. • If your total income will be less than \$65,000 (\$95,000 if married), enter "2" for each eligible child; then less "1" if you have three to six eligible children or less "2" if you have seven or more eligible children. • If your total income will be between \$65,000 and \$84,000 (\$95,000 and \$119,000 if married), enter "1" for each eligible child	G	<u> </u>
H	Add lines A through G and enter total here. (Note. This may be different from the number of exemptions you claim on your tax return.) ►	H	<u> </u>

For accuracy, complete all worksheets that apply.

- If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the **Deductions and Adjustments Worksheet** on page 2.
- If you are single and have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$40,000 (\$10,000 if married), see the **Two-Earners/Multiple Jobs Worksheet** on page 2 to avoid having too little tax withheld.
- If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

Separate here and give Form W-4 to your employer. Keep the top part for your records.

Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate OMB No. 1545-0074 2013	
1 Your first name and middle initial Jonathan R		Last name Agramonte	
Home address (number and street or rural route) 137 W 144th Apt 3D		2 Your social security number [REDACTED]	
City or town, state, and ZIP code N.Y. N.Y. 10030		3 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.	
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)		5 <u>0</u>	
6 Additional amount, if any, you want withheld from each paycheck		6 \$ <u> </u>	
7 I claim exemption from withholding for 2013, and I certify that I meet both of the following conditions for exemption. • Last year I had a right to a refund of all federal income tax withheld because I had no tax liability, and • This year I expect a refund of all federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here		7 <u> </u>	
Under penalties of perjury, I declare that I have examined this certificate and, to the best of my knowledge and belief, it is true, correct, and complete.			
Employee's signature (This form is not valid unless you sign it.) ► Jonathan Agramonte		Date ► 5-21-13	
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)		9 Office code (optional) 10 Employer identification number (EIN)	



**Notice and Acknowledgement of Pay Rate and Payday
Under Section 195.1 of the New York State Labor Law
Notice for Hourly Rate Employees**

1. Employer Information

Name:
42ND ST. Bakery LLC

Doing Business As (DBA) Name(s):
Cafe Metro

FEIN (optional):

Physical Address:
14 E 42nd Street
NY, NY 10017

Mailing Address:
315 Madison Avenue
NY, NY 10017 Suite 1501

Phone: 212-983-7474

3. Employee's rate of pay:

\$ 5.65 per hour

4. Allowances taken:

- ☐ None
- ☒ Tips 1.60 per hour
- ☐ Meals per meal
- ☐ Lodging
- ☐ Other

5. Regular payday: Thursday

6. Pay is:

- ☒ Weekly
- ☐ Bi-weekly
- ☐ Other

7. Overtime Pay Rate:

\$ 9.28 per hour (This must be at least 1½ times the worker's regular rate, with few exceptions.)

8. Employee Acknowledgement:

On this day I have been notified of my pay rate, overtime rate (if eligible), allowances, and designated payday on the date given below. I told my employer what my primary language is.

Check one:

- ☒ I have been given this pay notice in English because it is my primary language.
- ☐ My primary language is . I have been given this pay notice in English only, because the Department of Labor does not yet offer a pay notice form in my primary language.

[Signature]
Employee Signature

5-21-13
Date

A. Zavala Manager
Preparer's Name and Title

2. Notice given:

- ☒ At hiring
- ☐ On or before February 1
- ☐ Before a change in pay rate(s), allowances claimed or payday

The employee must receive a signed copy of this form. The employer must keep the original for 6 years.

42ND ST BAKERY LLC
315 MADISON AVENUE SUITE 1501
NEW YORK NY 10017

1030-FB54
100 Payroll

Payroll by Paychex, Inc.

JONATHAN ROSS AGRAMONTE
137 W 144TH STREET APT#3D
NEW YORK NY 10030

VOID

PERSONAL AND CHECK INFORMATION

Jonathan Ross Agramonte
137 W 144th Street Apt#3D
New York, NY 10030

Soc Sec #: xxx-xx-xxxx Employee ID: 687
Home Department: 100 Payroll

Pay Period: 05/18/13 to 05/24/13

Check Date: 05/29/13 Check #: 1300003358

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	101.40	101.40
NET PAY	101.40	101.40

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Hourly	26.83	5.6500	151.59	26.83	151.59
EARNINGS	26.83		151.59	26.83	151.59

OTHER ITEMS

Do not Increase Net Pay

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Cashtips	100.00	100.00

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		15.60	15.60
Medicare		3.65	3.65
Fed Income Tax	S 0	22.81	22.81
NY Income Tax	S 0	4.56	4.56
NY Disability		0.60	0.60
NY NYC Inc	S 0	2.97	2.97
TOTAL		50.19	50.19

NET PAY

THIS PERIOD (\$)
101.40

YTD (\$)
101.40

Payroll by Paychex, Inc.

Shift Detail by Employee

05/18/13 - 05/24/13

Run Date: 05/29/13
Run Time: 2:30:12PM

Date	Job	Shift In	Break In 1	Break Out1	Shift Out	Regular Hours	OT Hours
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Abdalla, Mohamed

05/18/13	Porter	08:59a	11:36a	11:06a	04:00p		
05/21/13	Porter	08:57a	11:34a	11:04a	04:05p	6.52	0.00
05/22/13	Porter	07:58a	11:39a	11:09a	04:00p	6.63	0.00
05/23/13	Porter	07:59a	11:46a	11:14a	04:01p	7.53	0.00
05/24/13	Porter	08:44a	11:30a	10:55a	04:02p	7.50	0.00
Employee Subtotal:						6.72	0.00
						34.90	0.00

Mohamed

Abdel Gaber, Sabry A 0577

05/19/13	Assistant Manager	02:00p			11:30p		
05/20/13	Assistant Manager	02:00p			11:36p	9.50	0.00
05/21/13	Assistant Manager	02:30p			11:44p	9.60	0.00
05/22/13	Assistant Manager	02:08p			11:36p	9.23	0.00
05/23/13	Assistant Manager	02:00p			11:33p	9.47	0.00
05/24/13	Assistant Manager	01:45p			11:41p	2.20	7.35
Employee Subtotal:						0.00	9.93
						40.00	17.28

Employee Subtotal:

gramonte, Jonathan

05/21/13	Delivery Person	09:45a	12:00p	11:30a	03:00p		
05/22/13	Delivery Person	07:00a	12:00p	11:30a	03:00p	4.75	0.00
05/23/13	Delivery Person	07:00a	11:30a	11:00a	03:05p	7.50	0.00
05/24/13	Delivery Person	07:00a	10:52a	10:22a	02:30p	7.58	0.00
Employee Subtotal:						7.00	0.00
						26.83	0.00

Employee Subtotal:

ajandres, Julian

05/19/13	Counter Person	02:29p	09:43p	09:13p	11:59p		
05/20/13	Counter Person	03:13p	08:57p	08:24p	11:59p	9.00	0.00
05/21/13	Counter Person	02:58p	06:37p	06:06p	11:59p	8.22	0.00
05/22/13	Counter Person	02:59p	07:43p	07:11p	11:59p	8.50	0.00
05/23/13	Counter Person	03:00p	11:11p	10:36p	11:59p	8.47	0.00
05/24/13	Counter Person	03:08p	10:46p	10:16p	11:59p	5.82	2.58
						0.00	8.35

42ND ST BAKERY LLC
315 MADISON AVENUE SUITE 1501
NEW YORK NY 10017

1030-FB54
100 Payroll

JONATHAN ROSS AGRAMONTE
137 W 144TH STREET APT#3D
NEW YORK NY 10030

Payrolls by Paychex, Inc.

VOID

PERSONAL AND CHECK INFORMATION

Jonathan Ross Agramonte
137 W 144th Street Apt#3D
New York, NY 10030

Soc Sec #: xxx-xx-xxxx Employee ID: 687
Home Department: 100 Payroll

Pay Period: 05/25/13 to 05/31/13

Check Date: 06/05/13 Check #: 1300003396

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	99.88	201.28
NET PAY	99.88	201.28

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Hourly	29.08	5.6500	164.30	55.91	315.89
EARNINGS	29.08		164.30	55.91	315.89

OTHER ITEMS

Do not Increase Net Pay

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Cashtips	135.22	235.22

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		18.57	34.17
Medicare		4.34	7.99
Fed Income Tax	S 0	30.00	52.81
NY Income Tax	S 0	6.50	11.06
NY Disability		0.60	1.20
NY NYC Inc	S 0	4.41	7.38
TOTAL		64.42	114.61

NET PAY

THIS PERIOD (\$)
99.88

YTD (\$)
201.28

Payrolls by Paychex, Inc.

Shift Detail by Employee

05/25/13 - 05/31/13

Run Date: 06/05/13
Run Time: 1:52:18PM

<u>Date</u>	<u>Job</u>	<u>Shift In</u>	<u>Break In</u> 1	<u>Break</u> <u>Out1</u>	<u>Shift Out</u>	<u>Regular Hours</u>	<u>OT Hours</u>
Abdalla, Mohamed							
05/25/13	Porter	09:00a	01:31p	12:57p	05:01p		
05/26/13	Porter	10:04a	11:52a	11:22a	03:58p	7.45	0.00
05/28/13	Porter	09:05a	11:34a	11:04a	04:03p	5.40	0.00
05/30/13	Porter	08:58a	11:37a	11:00a	03:58p	6.47	0.00
05/31/13	Porter	08:56a	11:34a	11:01a	04:01p	6.38	0.00
Employee Subtotal:						6.53	0.00
						32.23	0.00
Abdel Gaber, Sabry A 0577							
05/26/13	Assistant Manager	01:45p			11:24p		
05/27/13	Assistant Manager	11:00a			09:22p	9.65	0.00
05/28/13	Assistant Manager	02:00p			11:24p	10.37	0.00
05/29/13	Assistant Manager	02:00p			11:45p	9.40	0.00
05/30/13	Assistant Manager	02:00p			11:33p	9.75	0.00
05/31/13	Assistant Manager	02:10p			11:36p	0.83	8.72
Employee Subtotal:						0.00	9.43
						40.00	18.15
gramonte, Jonathan							
05/25/13	Delivery Person	11:00a	04:01p	03:31p	05:54p		
05/28/13	Delivery Person	07:01a	03:17p	02:47p	03:17p	6.40	0.00
05/29/13	Delivery Person	07:00a	11:05a	10:35a	03:00p	7.77	0.00
05/30/13	Delivery Person	07:05a	02:46p	02:16p	03:00p	7.50	0.00
Employee Subtotal:						7.42	0.00
						29.08	0.00
ejandres, Julian							
05/27/13	Counter Person	03:07p			09:19p		
05/28/13	Counter Person	02:54p	06:30p	06:00p	11:59p	6.20	0.00
05/29/13	Counter Person	03:03p	11:40p	11:10p	11:59p	8.58	0.00
05/30/13	Counter Person	03:10p	09:20p	08:50p	11:59p	8.43	0.00
05/31/13	Counter Person	02:59p	11:47p	11:17p	11:59p	8.32	0.00
Employee Subtotal:						8.47	0.03
						40.00	0.03



315 Madison Ave Suite 1501
New York, New York 10017
(212) 983-7474

June 5, 2013

Reference: Jonathan Ross Agramonte
137 W 144th St Apt 3D
New York, NY 10030
D/O/B 09/12/1977

Dear Mr. Agramonte,

Please be aware that your employment with 42nd St Bakery, dba Café Metro started May 21, 2013 and ended on May 30, 2013. If you have any questions or concerns, please do not hesitate to contact me. As you are no longer employed, you are still responsible to inform the company of an address change if it should occur. All W2's will be mailed to the address on file. We wish you well in your future endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber Rauch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Amber Rauch
Human Resources